



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-3864

Re: Issuance of warrant payable
to Assistant County Attorney
for examining trial fees

You have presented to this department a request for our opinion upon the question of whether you would be authorized to issue a warrant payable to the Assistant County Attorney of Dallas County for examining trial fees.

The population of Dallas County according to the most recent Federal Census is 6,494, and the County Attorney is on the fee basis. On April 14, 1941, by order of the commissioners' court of Dallas County, Texas, the Honorable Floyd H. Richards, County Attorney, was authorized to employ A. Wendell Salyers as Assistant County Attorney for that county. You further advise that Mr. Richards then entered the service of the United States Army and is now serving in the Army and Mr. Salyers is acting in his absence as County Attorney for Dallas County and as such has filed claim with your department for examining trial fees.

The facts are stated in your letter warranting the inference that Mr. Richards, County Attorney, has vacated his office as such. This opinion, then, proceeds upon the assumption that Mr. Richards, though now serving in the United States Army, still legally retains the office of County Attorney, and that while Mr. Salyers purportedly is acting as County Attorney in Mr. Richards' absence, nevertheless his real status is that of Assistant County Attorney.

Article 3902, Vernon's Revised Civil Statutes, provides:

"Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his

duties he shall apply to the county commissioners' court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensations to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the commissioners' court or any member thereof attempt to influence the appointment of any person as deputy, assistant or clerk in any office. Upon the entry of such order the officers applying for such assistants, deputies or clerks shall be authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. The compensation which may be allowed to the deputies, assistants or clerks above named for their services shall be a reasonable one, not to exceed the following amounts:

"1. In counties having a population of twenty-five thousand (25,000) or less inhabitants, first assistant or chief deputy not to exceed Eighteen Hundred (\$1800.00) Dollars per annum; other assistants, deputies or clerks not to exceed Fifteen Hundred (\$1500.00) Dollars per annum each.

". . . ."

Article 3891, Vernon's Revised Civil Statutes, provides in part as follows:

"Each officer named in this chapter shall first, out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover costs of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the amount needed to pay the amounts above specified, same shall be deemed excess fees, and shall be disposed of in the manner hereinafter provided.

" "

Article 3897, Vernon's Revised Civil Statutes, provides:

"Each district, county and precinct officer, at the close of each fiscal year (December 31st) shall make to the district court of the county in which he resides a sworn statement in triplicate (on forms designed and approved by the State Auditor) a copy of which statement shall be forwarded to the State Auditor by the clerk of the district court of said county within thirty (30) days after the same has been filed in his office, and one copy to be filed with the county auditor, if any; otherwise said copy shall be filed with the Commissioners' Court. Said report shall show the amount of all fees, commissions and compensations whatever earned by said officer during the fiscal year; and secondly, shall show the amount of fees, commissions and compensations collected by him during the fiscal year; thirdly, said report shall contain an itemized statement of all fees, commissions and compensations earned during the fiscal year which were not collected, together with the name of the party owing said fees, commissions and compensations. Said report shall be filed not later than February 1st following the close of the fiscal year and for each day after said date that said report

Honorable George H. Sheppard, page 4

remains not filed, said officer shall be liable to a penalty of Twenty Five (\$25.00) Dollars, which may be recovered by the county in a suit brought for such purposes, and in addition said officer shall be subject to removal from office."

Article 3899, Vernon's Revised Civil Statutes, provides in part as follows:

"At the close of each month of his tenure of office each officer named herein who is compensated on a fee basis shall make as part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, premiums on officials' bonds, including the cost of surety bonds for his Deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses and other necessary expenses. . . . The amount of such salaries paid to Assistants and Deputies shall also be clearly shown by such officer, giving the name, position and amount paid to each; and in no event shall any officer show any greater amount than actually paid any such Assistant or Deputy. The amount of such expenses, together with the amount of salaries paid to Assistants, Deputies and Clerks shall be paid out of the fees and by such officer. . . ."

Article 1020, V. R. C. C. P., provides that district and county attorneys, for attending and prosecuting each felony case before an examining court, shall be paid by the State a fee of \$5.00.

From an examination of the above quoted Articles, it appears that the Assistant County Attorney is not entitled to collect examining trial fees in his own right, but that such fees are due the principal officer, to-wit, the County Attorney, by whom the Assistant County Attorney is to be paid for the services he may render, in accordance with the order of the commissioners' court. It is also to be observed that the duty devolves upon the principal officer, the County Attorney, to render to the County an accounting of the fees received by him.

Honorable George H. Sheppard, page 5

You are therefore advised that in our opinion the warrant for examining trial fees should be made payable to Floyd H. Richards, County Attorney, Dallas County, Texas, rather than to A. Wendell Salyers, Assistant County Attorney of Dallas County, Texas.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

RW Fairchild

R. W. Fairchild
Assistant

RWF:db

APPROVED SEP 10, 1941

Blum R. Linn

acting ATTORNEY GENERAL OF TEXAS

